

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Dr. Thomasena Adams, Rhonda Polin,)
 Shaun Thacker, Orangeburg County)
 School District, Sherry East, and the)
 South Carolina Education Association.)
)
 Plaintiffs,)
)
 Governor Henry McMaster, Palmetto)
 Promise Institute, South Carolina Office)
 of the Treasurer, and South Carolina)
 Department of Administration.)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Civil Action No.: 2020-CP-38-_____

**MOTION FOR PRELIMINARY
 INJUNCTION AND COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE
 RELIEF**

PLAINTIFFS, hereby file this motion and complaint. Plaintiffs would respectfully show unto the Court as follows:

1. Plaintiff Dr. Thomasena Adams is a resident of and taxpayer in Orangeburg County, South Carolina who has worked for over fifteen years in public education and holds a Doctorate in Education.

2. Plaintiff Shaun Thacker is a resident of and taxpayer in Lexington County, South Carolina who has children in at Irmo High School and Irmo Middle School.

3. Plaintiff Rhonda Polin is a resident of and taxpayer in Orangeburg, South Carolina who is a Middle School Resource Teacher and has been employed in the public school system for over eighteen years in multiple capacities.

4. Plaintiff Orangeburg County School District is the Public School District in Orangeburg, South Carolina responsible for the education of over twelve thousand students and is a Local Educational Agency within the framework of the Governor’s Emergency Education Relief fund application.

5. Plaintiff Sherry East is a resident of and taxpayer in York County, South Carolina. She is the president of the South Carolina Education Association and an educator.

6. Plaintiff South Carolina Education Association (SCEA) is a voluntary association registered under 26 U.S.C § 501(c)(6) . Members of The SCEA are composed of teachers, administrators and support staff employed in the public schools throughout the State of South Carolina. The SCEA and its members have a direct interest in the funding and operation of the public school system, maintaining and enhancing safe employment and compensation of public educators, and advancing the interests of public education throughout the State.

7. Defendant South Carolina Office of the Treasurer is the division of South Carolina government charged with the State Treasury.

8. Defendant South Carolina Department of Administration is a division of State Government that has been charged with administering the “Safe Access to Flexible Education (SAFE) Grants” program.

9. Defendant Governor Henry McMaster is the primary executive within the executive branch of the State of South Carolina.

10. Defendant Palmetto Promise Institute is a South Carolina non-profit organization and the registered owner of “mysceducation.org.”

11. The alleged questions of law are pertinent to Orangeburg County, South Carolina, and take place in large part in Orangeburg County, South Carolina although venue is not necessary for a declaratory judgment action; this action relates to a matter of public interest and public importance that requires future guidance.

12. Jurisdiction and venue are proper with this Court, the Orangeburg County Court of Common Pleas pursuant to South Carolina Code § 15-53-20 *et seq.*

13. On July 21, 2020, Defendant Governor Henry McMaster announced his plan to create “Safe Access to Flexible Education (SAFE) Grants,” which are one-time grants to subsidize private school students’ education at private schools in the State of South Carolina, including in Orangeburg County.

14. A grant of this nature represents a direct transfer of funds from the State government to a private school.

15. A grant of this nature at no time exists in the hands of a student or parent; the funds are distributed directly from the State to the school.

16. In the course of this announcement, Governor McMaster stated that the program would benefit private schools and act as a study of feasibility and productivity.

17. These subsidies and payments are allocated from the State’s CARES Act funding, specifically the Governor’s Emergency Education Relief fund.

18. These subsidies and payments to private schools purport to assist about five thousand students in the State of South Carolina.

19. There are over seven hundred thousand students in public schools in the State of South Carolina.¹

20. “Mysceducation.org” is the online portal used by schools for Safe Access to Flexible Education (SAFE) Grant funding and for parents to receive notifications about these grants.

21. Orangeburg County schools will receive just under six million dollars in CARES Act funding, which will amount to approximately four hundred and seventy three dollars per

¹ *Public Education Finances: 2013*, Table 2, US Census Bureau, <https://www.census.gov/content/dam/Census/library/publications/2015/econ/g13-aspef.pdf>.

student, in comparison to up to six thousand five hundred dollars per student through Safe Access to Flexible Education (SAFE) Grants.

22. A private school that is selected for a full Safe Access to Flexible Education (SAFE) Grant will receive about thirteen times as much funding as the average public school student in Orangeburg. This disparity is even greater in districts such as Richland County School District Two, in which the private school selected for a full Safe Access to Flexible Education (SAFE) Grant will receive about forty-five times as much funding as the average public school student.

23. South Carolina is in a state of public health emergency.

24. South Carolina has applied to the federal government for emergency relief that complies with the federal CARES Act.

25. Title XI, Section 4 of the South Carolina Constitution states: “No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution.”

26. Title XI, Section 3 of the South Carolina Constitution states: “The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.”

27. Defendant Governor McMaster’s proposed use of the Governor’s Emergency Education Relief would directly violate South Carolina jurisprudence: “We therefore hold that the use of public funds under the Act to provide tuition grants to students attending the participating religious institutions constitutes aid to such institutions within the meaning of, and prohibited by,

Article XI, Section 9, of the Constitution of South Carolina.” *Hartness v. Patterson*, 255 S.C. 503, 508, 179 S.E.2d 907, 909 (1971).²

MOTION FOR A PRELIMINARY INJUNCTION (Rule 65(b), SCRPC)

28. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 through 27 as if set forth verbatim.

29. Rule 65 of the civil rules provides that a Court may issue a preliminary injunction in order to prevent imminent harm. Rule 65(b), SCRPC.

30. A preliminary injunction should issue here to prevent *ultra vires* action by the State Departments and Governor and to prevent the State from distributing monies it will not be able to recover.

31. If a distribution occurs, there will not be an adequate remedy at law.

32. Accordingly, a preliminary injunction should issue preventing the distribution of any Safe Access to Flexible Education (SAFE) Grants.

FIRST CAUSE OF ACTION
(Declaratory Relief)

33. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 through 32 as if set forth verbatim.

34. Pursuant to South Carolina Code § 15-53-20 *et seq*, the Court should declare that:

- a. The proposed use of the Safe Access to Flexible Education (SAFE) Grants funded by the Governor’s Emergency Education Relief fund is unconstitutional.

² This provision was later changed to Article XI, Section 4.

- b. The Governor's Emergency Education Relief fund monies cannot be spent on private or religious schools in a manner that would violate the South Carolina Constitution.

SECOND CAUSE OF ACTION
(Injunctive Relief)

35. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 through 34 as if set forth verbatim.

36. Pursuant to South Carolina Code § 15-53-120, the Court should enter a preliminary and, after a merits hearing, permanent injunction enjoining the Defendants from any further actions related to the use of the Governor's Emergency Education Relief fund monies for private or religious schools and any further relief necessary to conform the Defendants' conduct to the law and effectuate the orders and judgment of this Court.

WHEREFORE, having fully set forth their complaint above, Plaintiffs pray that this honorable Court grant their motion for a preliminary injunction, and after discovery, enter a final declaratory judgment and injunctive relief as set forth above, along with any further relief the Court deems just and proper.

Respectfully submitted,

/s/ Skyler B. Hutto #102741

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August 4, 2020

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